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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE WOODBRIDGE INVESTMENTS LITIGATION

Case No. 2:18-CV-00103-DMG (MRWx)

PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL SETTLEMENT APPROVAL; MEMORANDUM OF LAW IN SUPPORT THEREOF

Date: December 17, 2021
Time: 10:00 a.m.
Courtroom: 8C, Eighth Floor
Judge: Honorable Dolly M. Gee

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that at 10:00 a.m. on December 17, 2021 at 350 West 1st Street, Los Angeles, CA, 90012, Courtroom 8C, before the Honorable Dolly M. Gee, Plaintiffs Mark Baker, Jay Beynon Family Trust DTD 10/23/1998, Alan and Marlene Gordon, Joseph C. Hull, Lloyd and Nancy Landman, and Lilly A. Shirley, will and do hereby move the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, to approve the parties' Settlement, certify the Settlement Class, direct payment of Class members under the Settlement, and enter the proposed Final Approval Order and Judgment of Dismissal.

The Motion is based on this Notice of Motion, the incorporated memorandum of points and authorities, the Declarations of Daniel C. Girard ("Girard Decl.") and Michael I. Goldberg ("Goldberg Decl.") submitted herewith, the record in this action, the argument of counsel, and any other matters the Court may consider.

Counsel for Plaintiffs and Defendant Comerica Bank conferred pursuant to Local Rule 7-3 on October 1, 2021. Comerica does not oppose the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On September 3, 2021, after over three years of hard-fought litigation, the Court granted preliminary approval of a $54,200,000 settlement to resolve this action alleging Comerica Bank aided and abetted the Woodbridge investment fraud. Comerica will pay $54,500,000, comprised of $54,200,000 to settle the class action and an additional $300,000 to settle the Trust's related action against Comerica ("Trust Action").[1] Nothing has occurred in the interim to change the conclusion that the settlement is fair, reasonable, and adequate and in the best interest of class members. The evidence developed in discovery, the adversarial negotiations, and the support from all concerned parties demonstrate that the settlement is procedurally and substantively fair. Plaintiffs reviewed approximately 2 million pages of documents, and the parties completed 27 depositions. With the benefit of a developed record, after fully briefing Plaintiffs' motion for class certification, the parties agreed pursuant to the Court's ADR order to mediation before retired federal Judge W. Royal Furgeson. After multiple mediations, the parties ultimately accepted Judge Furgeson's proposal to resolve the litigation.

The settlement fund agreed to by the parties is non-reversionary, and class members will receive their payments automatically. The fund substantially exceeds Comerica's policy limits and will exhaust its available insurance. The settlement amount represents a substantial portion of the class's maximum recoverable damages, and is a favorable result considering the risks of obtaining nationwide class certification and proving Comerica knew of the Ponzi scheme for its duration. Absent settlement, Plaintiffs would face challenging factual and legal defenses, and a well-resourced defendant with experienced defense counsel. Plaintiffs' counsel recognize that such a well-resourced defendant is likely to delay an eventual trial and exhaust appeals.

[1] *See Michael I. Goldberg as Trustee for the Woodbridge Liquidation Trust v. Comerica Bank*, Adv. Proc. No. 20-50452 (JKS), pending in the United States Bankruptcy Court for the District of Delaware per this Court's February 5, 2020 transfer order (No. 19-cv-3439, Doc. # 44).

The $54.5 million settlement is supported by the Woodbridge Liquidation Trustee,[2] the largest class member, to whom approximately 61% of Woodbridge investors assigned their claims. Since the Court's grant of preliminary approval, the Trustee carried out the notice program and mailed the settlement notice—revised according to the Court's instructions [Doc. # 193]—to the non-Trustee class members, who will now have one month to respond to this motion and to Plaintiffs' concurrently filed fee motion. Plaintiffs will attach and respond to any objections to final settlement approval in their reply brief submitted under the Court's schedule.

For the reasons set forth in more detail below, Plaintiffs respectfully request that the Court grant final approval and enter judgment, concluding this litigation and clearing the way for class members to receive their payments.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Plaintiffs' Allegations and Case Background.

From around July 2012 through December 2017, Woodbridge principal Robert H. Shapiro ran a Ponzi scheme, raising $1.2 billion in investments from thousands of investors across the country. The investments were denominated as "notes" or "units" in Woodbridge fund entities. Shapiro and his sales agents told investors that their money would be used to make high-interest loans to third-party borrowers at favorable loan-to-value ratios, and that note investments would be backed by mortgages on specific properties. But Shapiro made few loans to unaffiliated third-party borrowers, instead issuing some $675 million in nominal "loans" to disguised affiliates that he controlled. Those entities had no revenue and thus no ability to pay "interest" to service the loans. Despite generating almost no income, Woodbridge paid investors over $368 million and incurred $172 million in operating expenses. Shapiro and his wife misappropriated at least another $21.2 million for personal expenditures.

[2] For background on the formation and operation of the Liquidation Trust, see the previously submitted Declaration of Michael Goldberg in Support of Plaintiffs' Motion for Class Certification, ¶¶ 4, 9-18, 21-30 [Doc. # 172]. Capitalized terms not otherwise defined herein have the meaning set forth in the settlement agreement [Doc. # 188-1].

On December 4, 2017, chapter 11 bankruptcy cases were instituted for Woodbridge Group of Companies, LLC and certain affiliates (collectively, and with the affiliated entities who filed for bankruptcy on later dates, the "Debtors") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). *See In re Woodbridge Grp. of Cos.*, No. 17-12560-JKS (Bankr. D. Del.) ("Bankruptcy"). On December 20, 2017, the SEC filed a civil complaint alleging that Shapiro had run a "massive Ponzi scheme" and misappropriated millions of investor dollars. *SEC v. Shapiro*, No. 1:17-cv-24624-MGC (S.D. Fla.). Shapiro is now serving a 25-year sentence in federal prison.

On January 4, 2018, Plaintiff Jay Beynon brought the first of a series of lawsuits filed in this Court against Comerica for allegedly aiding and abetting the Woodbridge scheme. *See In re Woodbridge Invs. Litig.*, No. 18-cv-00103-DMG-MRW (C.D. Cal. Jan. 4, 2018) [Doc. # 1]. The investor Plaintiffs alleged that all of Woodbridge's bank accounts were held at Comerica, and further alleged that despite being aware of Woodbridge's suspicious banking activity, including receiving over a hundred internal fraud detection alerts, Comerica continued servicing the Woodbridge accounts. On April 4, 2018, this Court consolidated four related actions against Comerica and appointed Interim Lead Counsel and a Plaintiffs' Executive Committee. [Doc. # 39]. The Court consolidated an additional action on May 9, 2018. [Doc. # 47].

In April 2018, Comerica sued the named Plaintiffs in the Bankruptcy Court, seeking to enjoin them from prosecuting their claims in this Court. *See* No. 18-50382-BLS (Bankr. D. Del. Apr. 4, 2018) ("Injunction Proceeding") [Doc. # 1]. After a hearing on Comerica's motion, the parties negotiated, and the Bankruptcy Court approved, an agreement to stay this class action pending further order of the Bankruptcy Court. This Court approved the stay on June 18, 2018. [Docs. # 51, 52]. During the stay, Plaintiffs obtained access to documents produced by the Debtors and Comerica pursuant to an examination in the Bankruptcy under Rule 2004 of the Federal Rules of Bankruptcy

Procedure. [Doc. # 45]; Girard Decl., ¶ 10. Plaintiffs through that process received and reviewed over 900,000 pages of Woodbridge emails and other records. *Id*.

The Bankruptcy Court confirmed a chapter 11 plan for the Debtors on October 26, 2018 (the "Plan"). Bankruptcy [Doc. # 2903]. The Plan provided for the formation of the Woodbridge Liquidation Trust (the "Trust"), which owns and is charged with, among other things, pursuing two categories of causes of action and distributing the proceeds to the Trust beneficiaries. The first category are claims formerly owned by the Debtors and vested in the Trust pursuant to the Plan. The second category, known as "Contributed Claims," are Woodbridge-related causes of action against third parties (i.e., other than against Woodbridge) assigned by Woodbridge investors to the Trust pursuant to an election available under the Plan. Under the Bankruptcy Court-approved Plan voting process, each Woodbridge investor was given the option of assigning their Contributed Claims against third parties (including Comerica) to the Trust in exchange for a five percent (5%) increase in distributions from the Trust. Under the Plan, the Trustee is authorized to pursue those claims as assignee. Approximately 61% of the Woodbridge investors (by dollar amount) elected to assign their claims ("Contributing Claimants"); the remaining approximately 39% (by dollar amount) did not ("Non-Contributing Claimants"). All of the Class Representatives in this case are Non-Contributing Claimants.

On August 15, 2019, the Bankruptcy Court granted Plaintiffs' motion to abstain from hearing the Injunction Proceeding so the class action could proceed in this Court. Injunction Proceeding [Doc. # 36]. Pursuant to the parties' stipulation, this Court lifted the stay on August 22, 2019. [Doc. # 81]. Plaintiffs filed their Consolidated Class Action Complaint against Comerica on October 3, 2019, for: (1) aiding and abetting fraud; (2) aiding and abetting breach of fiduciary duty; (3) negligence; and (4) violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). [Doc. # 92].

B. The Court's Ruling on Comerica's Motion to Dismiss.

On November 1, 2019, Comerica moved to dismiss the complaint in its entirety. [Doc. # 110]. Plaintiffs filed their opposition on December 9 and Comerica filed its reply on December 23. [Doc. ## 120, 121]. On August 5, 2020, the Court granted in part and denied in part Comerica's motion to dismiss. *In re Woodbridge Invs. Litig.*, No. CV 18-103-DMG (MRWx), 2020 WL 4529739 (C.D. Cal. Aug. 5, 2020). The Court concluded that Plaintiffs stated claims for aiding and abetting fraud and breach of fiduciary duty, finding they had sufficiently alleged that Comerica knew of Shapiro's wrongdoing. The Court also declined to dismiss Plaintiffs' UCL claim, but dismissed Plaintiffs' negligence claim with leave to amend. *Id*. at *7-8.

Plaintiffs filed the operative First Amended Complaint on August 26, 2020, electing not to reassert a negligence claim. [Doc. # 150]. Comerica answered on September 16, 2020. [Doc. # 155].

C. Fact and Expert Discovery.

The discovery stay expired on January 24, 2020. Plaintiffs propounded, and Comerica responded to, four sets of requests for documents, one set of interrogatories, and one set of requests for admission. Girard Decl., ¶ 17, 22. Comerica produced over 13,000 documents consisting of over 1,200,000 pages relating to its compliance policies and procedures, its fraud monitoring protocols, and information specific to the Woodbridge accounts, including account statements, wire transfer statements, and copies of checks. Girard Decl., ¶ 10. Plaintiffs deposed 17 of Comerica's witnesses, including the Studio City Assistant Branch Manager during the relevant time period, Comerica's current and former Anti-Money Laundering ("AML") Investigations Manager, three AML Team Leads, several AML Investigators, and personnel from Comerica's subpoena processing department. Girard Decl., ¶ 28. After Comerica filed its opposition to class certification, Plaintiffs also deposed Comerica's expert, Professor Christopher James. *Id*. Plaintiffs responded to all of Comerica's written discovery, including contention interrogatories, and produced responsive documents. Girard Decl., ¶ 26. Each of the eight

Plaintiffs appeared for a deposition. Girard Decl., ¶ 28, 69. Plaintiffs also represented the Trustee at his deposition. Girard Decl., ¶ 28.

Comerica's document productions and written discovery responses were the subject of several disputes among the parties, which entailed frequent negotiations and resulted in one motion to compel. [Doc. # 128]. In late July 2020, the parties briefed and appeared before Magistrate Judge Wilner in connection with a discovery dispute concerning Comerica's document production and Comerica's privilege assertions under the Bank Secrecy Act. [Doc. ## 128, 130, 133, 140, 141, 143, 147].

D. Plaintiffs' Motion for Class Certification.

On April 16, 2021, Plaintiffs moved to certify their claims for aiding and abetting fraud and aiding and abetting breach of fiduciary duty on a nationwide basis under California law. [Doc. # 168]. On May 14, Comerica filed its opposition along with a declaration from its expert, Professor James. [Doc. # 177]. Comerica argued in part that under California's choice of law rules and Ninth Circuit precedent, the law of each Class member's state of residence governs their claims and therefore a nationwide class could not be certified. Comerica also argued that common issues do not predominate because issues of reliance and causation, as well as whether Comerica had a duty to disclose, require individualized inquiries given that Class members were not presented with uniform information, invested for different reasons, and had differing interactions with non-parties before investing. On June 11, Plaintiffs filed their reply in support of class certification and also moved to strike the James declaration. [Doc. ## 182, 184]. Comerica filed an opposition to the motion to strike on June 18. [Doc. # 185]. Hearing on Plaintiffs' motion for class certification was set for June 25.

E. The Settlement Negotiations.

In compliance with the Court's ADR Order, the parties began discussing mediation in March 2021. [Doc. # 165]. The parties retained as mediator Judge Royal Furgeson (Ret.), who served for 19 years as a District Judge in the Western and Northern Districts of Texas and as a member of the Judicial Panel on Multidistrict Litigation. The parties

served confidential mediation briefs on May 19 and mediated with Judge Furgeson on May 25 and again on June 15. Girard Decl., ¶ 31-32. The mediation sessions were attended by Michael I. Goldberg, the trustee ("Trustee") of the Woodbridge Liquidation Trust, in his capacity as assignee of approximately 61% of Woodbridge investors (by dollar amount), and by the Trust's experienced Los Angeles-based bankruptcy counsel. After two sessions failed to produce agreement, the parties ultimately accepted Judge Furgeson's mediator's proposal. Comerica will pay $54,500,000, comprised of $54,200,000 to settle the class action and an additional $300,000 to settle the Trust Action.

Following Local Rule 16-15.7, the parties informed the Court's deputy clerk of the agreement in principle on June 20, 2021, and on June 22 the Court approved a stipulation suspending all pending case deadlines and directing Plaintiffs to move for preliminary approval by August 6. [Doc. # 187]. The parties then negotiated the Settlement Agreement and related documentation. Girard Decl., ¶ 35.

The Court heard Plaintiffs' motion for preliminary settlement approval on September 3, 2021. After the hearing, the Court entered an order granting preliminary approval [Doc. # 192], and subsequently approved the parties' revised proposed notice as modified based on the Court's comments at the hearing [Doc. # 193].

III. THE SETTLEMENT

A. The Settlement Class.

The proposed settlement is on behalf of the following class: (i) the Trust, as assignee of the claims of the Contributing Claimants, and (ii) the Non-Contributing Claimants. Settlement § 1(ii). The settlement class definition is effectively identical to the class definition set forth in the First Amended Complaint [Doc. # 150], excluding "net winners" and those whose claims in the bankruptcy cases were disallowed (including certain insiders and brokers who sold Woodbridge investments). There are 4,666 Contributing Claimants and 3,274 Non-Contributing Claimants. The class period is July 1, 2012 to December 4, 2017, when Woodbridge filed for bankruptcy.

Under the Plan, each Woodbridge investor holding an "allowed claim," as that term was defined in the Plan, received beneficial interests in the Liquidation Trust pursuant to the formula set forth in the Plan. This formula calculated each investor's "net claim," defined as the investor's outstanding unpaid principal minus all pre-bankruptcy distributions (other than return of principal) received by that investor (with the net claims of Contributing Claimants increased by 5%, as previously discussed). Noteholders received one Class A Trust interest in exchange for every $75.00 of net claims held by such Noteholders, and Unitholders received 72.5% of one Class A Trust interest and 27.5% of one Class B Trust interest for every $75.00 of net claims held by such Unitholder. Investors holding approximately 61% of all "net claims" against the Debtors elected to assign their "Contributed Claims" to the Trust. As a result, the Trust holds those investors' claims against Comerica, is a Class member on account of those claims, and is entitled to the percentage of the class recovery allocable to those Contributing Claimants. The Trust will also receive the $300,000 payment to settle the Trust Action. Those amounts (after Court-approved deductions) ultimately will be distributed to all Trust beneficiaries, including both Contributing Claimants and Non-Contributing Claimants, based on the Trust interests held by those beneficiaries.[3] Because they retained their claims against Comerica (i.e., they did not elect to assign their Contributed Claims to the Trust), the Non-Contributing Claimants will also receive a separate distribution as Class members in their individual capacities (in addition to what they receive from the Trust in their capacities as Trust beneficiaries).

B. The Settlement Consideration.

The proposed $54.5 million settlement will exhaust the entirety of Comerica's available insurance. The class release is straightforward, encompassing all claims that were or could have been asserted in the class action and the Trust Action. Girard Decl., ¶ 2; Settlement §§ I(dd), IX, X. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,

[3] *See* Declaration of Michael Goldberg in Support of Plaintiffs' Motion for Class Certification, ¶ 26 [Doc. # 172].

1287-88 (9th Cir. 1992); *Hesse v. Sprint Corp*., 598 F.3d 581, 590 (9th Cir. 2010) ("A settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action, but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action.") (internal quotation marks and citations omitted). No portion of the settlement fund will revert to Comerica. Notice and administrative expenses estimated at $25,000 will be deducted from the settlement and paid to the Trust, and any service awards to class representatives will be deducted from the settlement. Attorneys' fees and expense reimbursements as approved by the Court will be paid to Plaintiffs' Class Counsel. Girard Decl., ¶¶ 47, 62-63. The balance of the fund will be applied to pay claims of Class members. *Id*.

Plaintiffs believe that the total $54.2 million recovery in the class action is a favorable result in relation to the potential aggregate recoverable damages had they prevailed on class certification, at trial and on appeal. Plaintiffs had not completed their analysis of damages for trial purposes, but preliminary estimates suggest damages as high as $500 million. The class recovery of $54.2 million represents at least 10% of best-case scenario damages assuming the Court granted class certification on a nationwide basis, Plaintiffs prevailed in full on their claims for the entire class period, the jury awarded damages on an aggregate basis, and the Ninth Circuit affirmed. Girard Decl., ¶ 39. If any of these assumptions were to prove incorrect, the actual recovery would be reduced or eliminated. The Trust also continues to pursue its own litigation and other efforts to maximize investor recoveries. Goldberg Decl., ¶ 11.

C. Notice and Administration.

The Court's preliminary approval order charges the Trustee with responsibility for giving notice and distributing cash payments to Settlement Class members. [Doc. # 192, ¶ 7]; Settlement § VI. The Trustee is in possession of the last-known mailing address for all Class members as part of administering the Trust, and these records were used to mail notice to every member of the Settlement Class at their last-known address. Girard

Decl., ¶ 44; Goldberg Decl., ¶ 12. The Trustee caused the notice to be mailed first-class on or before September 23, as well as posting it on the Trust's website, https://woodbridgeliquidationtrust.com/. Goldberg Decl., ¶ 12. Comerica also caused the CAFA Notice to be mailed to appropriate officials pursuant to 28 U.S.C. § 1715(b). Girard Decl., ¶ 45.

IV. ARGUMENT

The Court granted preliminary approval [Doc. # 192], and there have been no intervening events that would call for reconsideration of the Court's initial assessment that the Settlement is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(1)(B)(i-ii) (by granting preliminary approval, the court finds it will likely grant final approval). The parties' settlement is the product of lengthy negotiations between experienced counsel after extensive litigation, and the cash relief provided for the Woodbridge investors is adequate given the risks of continued litigation against Comerica. Further, the Settlement Class should be certified as the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied. The key issues in this case concerning Comerica's alleged knowledge of Shapiro's wrongdoing and its alleged contributions to fraud and breaches of fiduciary duty by the primary actors (Woodbridge and its executives and sales personnel) are common and predominate over any individualized issues. *See, e.g.*, *Black v. T-Mobile USA, Inc.*, 2019 WL 3323087, at *2 (N.D. Cal. July 24, 2019) ("Because no facts that would affect these requirements have changed since the Court preliminarily approved the class . . . this order incorporates by reference its prior analysis under Rules 23(a) and (b) as set forth in the order granting preliminary approval.").

A. The Settlement is Fair, Reasonable, and Adequate.

The Ninth Circuit recognizes "a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *see also Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015). Courts thus give "proper deference to the private consensual decision of the parties" and limit review "to the extent necessary to reach a reasoned

judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal quotation marks and citation omitted). In determining whether a proposed class settlement is "fair, reasonable, and adequate" (Fed. R. Civ. P. 23(e)), the Court "considers the following factors: the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel . . . and the reaction of the class members to the proposed settlement." *Elizabeth Khaled v. Libr. Sys. & Servs., LLC*, 2021 WL 2366952, at *2 (C.D. Cal. May 14, 2021) (citation omitted). Rule 23(e) "directs the parties to present [their] settlement to the court in terms of [a new] shorter list of core concerns," which are substantially identical to the traditional *Hanlon* factors. *Deborah Ochinero v. Ladera Lending, Inc.*, 2021 WL 2295519, at *4 (C.D. Cal. Feb. 26, 2021). "Thus, courts may apply the framework set forth in Rule 23, 'while continuing to draw guidance from the Ninth Circuit's factors and relevant precedent.'" *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2020 WL 1873554, at *7 (N.D. Cal. Mar. 11, 2020) (citation omitted).

As applied here, these factors confirm that both the procedure used in negotiating the Settlement and its substance are fair, reasonable, and adequate in all respects.

1. The Settlement is the Result of Arm's-Length Negotiations.

"A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). The Settlement in this case was reached through contested, arm's-length negotiations conducted by capable counsel. There were no negotiations until after the Court had ruled on Comerica's motion to dismiss and the parties had taken extensive discovery. Settlement discussions were conducted through an experienced mediator, the Honorable Royal Furgeson, who corroborates the adversarial nature of the negotiations.

[Doc. # 188-11]. *See Williams v. Brinderson Constructors, Inc.*, 2017 WL 490901, at *2 (C.D. Cal. Feb. 6, 2017) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.") (citation omitted). As stated in the preliminary approval order, "[t]he Settlement is the product of non-collusive, arm's-length negotiations between experienced class action and bankruptcy attorneys who were well informed of the strengths and weaknesses of the Action[.]" [Doc. # 192, ¶ 4].

2. The Recovery for the Class is Adequate in Light of the Risks, Expense, Complexity and Likely Duration of Further Litigation.

Because a settlement is the product of compromise, "[e]ven a fractional recovery of the possible maximum recovery amount may be fair and adequate in light of the uncertainties of trial and difficulties in proving the case." *Sanders v. LoanCare, LLC*, 2020 WL 8365241, at *6 (C.D. Cal. Dec. 4, 2020) (citation omitted); *see In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). In evaluating the fairness of a proposed settlement, courts "assess the plaintiffs' claims in determining the strength of their case relative to the risks of continued litigation[.]" *Lane v. Facebook, Inc.*, 696 F.3d 811, 823 (9th Cir. 2012) (citation omitted).

The proposed Settlement in this case amounts to at least 10% of the estimated losses and a much higher percentage of likely recoverable damage, considering the risks of continued litigation. The $54.2 million result meets or exceeds the recoveries in other class settlements that have been approved as adequate. *See*, *e.g.*, *In re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *4 (C.D. Cal. Oct. 13, 2015) (granting final approval and noting that a settlement providing investors 8% of their maximum recoverable damage "equals or surpasses the recovery in many other securities class actions."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (granting final approval of settlement in which class received payments in excess of 6% of potential damages); *see also Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (settlement amounting to a fraction of the potential recovery was reasonable in light of the risks of going to trial).

Continued litigation against Comerica would have posed many difficulties. While Plaintiffs believe they have developed sufficient evidence to certify the Class and prevail at trial, the Court might have declined to certify a nationwide class, for example, or certified as to California only, greatly reducing the potential recovery. Comerica opposed class certification of any kind and maintained that the Court could not certify a nationwide class under California law. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (defendant's vigorous opposition to "certification of a nationwide class" weighed in favor of settlement). Many courts have declined to certify nationwide classes. *See, e.g.*, *Holt v. Globalinx Pet LLC*, 2014 WL 347016, at *7 (C.D. Cal. Jan. 30, 2014) (citing *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581 (9th Cir. 2012)); *see also Czuchaj v. Conair Corp.*, 2016 WL 1240391, at *4 (S.D. Cal. Mar. 30, 2016) (decertifying nationwide class). When, as here, "there is a risk that class certification might not be maintained before entry of final judgment, this factor favors approving the proposed settlement." *Pederson v. Airport Terminal Servs.*, 2018 WL 2138457, at *8 (C.D. Cal. Apr. 5, 2018); *see Zubia v. Shamrock Foods Co.*, 2017 WL 10541431, at *12 (C.D. Cal. Dec. 21, 2017) ("uncertainty surrounding class certification" favored settlement approval).

Even if Plaintiffs were able to obtain (and maintain) certification of a nationwide class and prevail on a Rule 23(f) petition, Plaintiffs would have confronted major risks at summary judgment, trial, and on appeal. Comerica vigorously denied liability and advanced arguments that could have precluded recovery for all or most Class members. *See, e.g.*, *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016) ("The settlement the parties have reached is even more compelling given the substantial litigation risks"). Most significantly, Comerica argued that it had no knowledge of the ongoing wrongdoing and consequently cannot be held liable for aiding and abetting. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ("difficulties in proving the case" supported approval). Given that the fraud occurred over time, a jury might conclude that Comerica did not learn of it until some later point, if at all. A

finding that Comerica lacked actual knowledge of Woodbridge's wrongdoing until later in the Class period would reduce any class-wide recovery, potentially drastically. *See Newton v. Am. Debt Servs., Inc.*, 2016 WL 7743686, at *5 (N.D. Cal. Jan. 15, 2016) (difficulties in establishing that the defendant aided and abetted weighed in favor of approval).

Few Class members dealt directly with Comerica, and Plaintiffs did not claim that Comerica participated in the Ponzi scheme other than as a secondary tortfeasor. In similar aiding and abetting cases, courts have dismissed claims against financial institutions whose banking processes and accounts were used to commit fraud. *See, e.g.*, *Chance World Trading E.C. v. Heritage Bank of Commerce*, 438 F. Supp. 2d 1081, 1086 (N.D. Cal. 2005) (rejecting allegations of "atypical banking procedures" as insufficient for actual knowledge"), *aff'd*, 263 F. Appx. 630 (9th Cir. 2008); *Lamm v. State St. Bank & Tr.*, 749 F.3d 938, 950 (11th Cir. 2014) (it is not enough that "a bank disregarded 'red flags'"); *Heinert v. Bank of Am., N.A.*, 2019 WL 5287950, at *3 (W.D.N.Y. Oct. 18, 2019) (holding that "a bank's negligent failure to identify warning signs of fraudulent activity, such as atypical transactions—even where such signs converge to form a veritable 'forest of red flags'—is insufficient to impute actual knowledge"); *Freeman v. JP Morgan Chase Bank, N.A.*, 137 F. Supp. 3d 1284, 1298-99 (M.D. Fla. 2015) (because the bank did not conceal its customer's fraud, it could not have substantially assisted the fraud); *de Abreu v. Bank of Am. Corp.*, 812 F. Supp. 2d 316, 327-31 (S.D.N.Y. 2011) (dismissing aiding and abetting claims against Bank of America at summary judgment based on insufficient evidence of its Ponzi knowledge).

Comerica further argued that Plaintiffs could not provide evidence sufficient to prove causation. *See, e.g.*, *Giron v. Hong Kong*, 2017 WL 5495504, at *12 (C.D. Cal. Nov. 15, 2017) (granting summary judgment in favor of bank on aiding and abetting claims because there was "no triable issue of fact as to [plaintiffs'] theory of causation"). The uncertainty of Plaintiffs' success through continued litigation weighs in favor of the proposed settlement. *See, e.g.*, *In re China Med. Corp. Sec. Litig.*, 2013

WL 12126754, at *6 (C.D. Cal. May 16, 2013) (challenges in establishing defendant's knowledge, reliance, and causation at summary judgment and trial weighed in favor of approval).

Comerica also argued that the statute of limitations bars the claims of earlier Woodbridge investors, a position that, if accepted, could also have substantially narrowed the size of the Class and precluded a large subgroup of investors from recovering. While Plaintiffs asserted that the statute of limitations should be tolled due to Shapiro's fraudulent concealment or equitable tolling, this defense nonetheless presented a real risk to many Class members. *See Rodriguez*, 563 F.3d at 964 ("potential statute of limitations defense that could decrease the size of the class" supported approval of settlement).

Absent settlement, the costs and time required to litigate the case would increase, "especially considering no summary judgment motions have yet been filed." *Aguirre v. DirecTV, LLC*, 2017 WL 6888493, at *15 (C.D. Cal. Oct. 6, 2017). In contrast to the mounting costs and significant risks and delay of further litigation, the Settlement delivers immediate relief to Class members, and "[t]he absence of a claims-made process further supports the conclusion that the Settlement is reasonable." *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1351 (S.D. Fla. 2011). Every Class member will share in the recovery. Girard Decl., ¶ 38, 46. Accordingly, this factor favors final approval.

3. Extent of Discovery.

That the parties reached the Settlement on a well-developed record further supports its approval. To negotiate a fair and reasonable settlement, "the parties [must] have sufficient information to make an informed decision about settlement." *Linney*, 151 F.3d at 1239. "Settlement is favored when the litigation has proceeded to a point at which both plaintiffs and defendants have a clear view of the strengths and weaknesses of their cases." *Edwards v. First Am. Corp.*, 2016 WL 8999934, at *6 (C.D. Cal. Oct. 4, 2016) (quotation marks, citation, and alterations omitted).

Plaintiffs began settlement negotiations after extensive discovery and motion practice, giving them a full understanding of the strength and weakness of their claims. Girard Decl., ¶ 36; *see Rubin-Knudsen v. Arthur Gallagher & Co.*, 2020 WL 8025308, at *5 (C.D. Cal. Nov. 24, 2020) (active litigation over two years, including numerous depositions, review of tens of thousands of documents, and fully briefing class certification indicated that "Plaintiffs and their counsel have engaged in more than sufficient investigation."); *Gonzalez v. BMC W., LLC*, 2018 WL 3830774, at *5 (C.D. Cal. May 23, 2018) (discovery gave parties "a clear idea of the strengths and weaknesses of their respective cases"). This factor thus supports the reasonableness of the Settlement. *See Byrne v. Santa Barbara Hosp. Servs., Inc.*, 2017 WL 5035366, at *8 (C.D. Cal. Oct. 30, 2017) ("Here, the parties engaged in discovery and investigation, which allowed them to effectively assess the strengths and weaknesses of the claims.").

4. Experience and Views of Counsel.

Courts also give weight to the view of experienced counsel. *See, e.g.*, *Hillman v. Lexicon Consulting, Inc.*, 2017 WL 10433869, at *8 (C.D. Cal. Apr. 27, 2017); *In re Omnivision*, 559 F. Supp. 2d at 1043; *Nat'l Rural Telecoms. Coop.*, 221 F.R.D. at 528. After developing the evidence over three years, taking depositions of key witnesses, briefing a motion to dismiss and class certification, Class Counsel recommend the Settlement. Girard Decl., ¶¶ 36, 39. Given their collective experience in cases of this nature, Class Counsel's support for the Settlement "weighs in favor of" its approval. *Antonio Hurtado v. Rainbow Disposal Co.*, 2021 WL 79350, at *5 (C.D. Cal. Jan. 4, 2021). All of the Plaintiffs support the Settlement as well, and Class Counsel will respond to any objections on reply. Girard Decl., ¶¶ 39, 46, Ex. 2-6.

5. The Settlement Treats All Class Members Equitably.

The Settlement will allocate the fund equitably among Class members. "[A]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." *Hendricks v. StarKist Co*, 2015 WL 4498083, at *7 (N.D. Cal. July 23, 2015) (citation omitted); *see, e.g.*, *In re*

Aftermarket Auto. Lighting Prod. Antitrust Litig., 2014 WL 12591624, at *4 (C.D. Cal. Jan. 10, 2014).

Approximately 61% of the net class action settlement payment (i.e., after deduction of attorneys' fees and litigation costs) will be distributed to the Trust, as assignee of the Contributing Claimants, who assigned their claims against Comerica to the Trust. These funds will in turn be distributed by the Trustee to all Trust beneficiaries *pro rata* based on their Trust interests, under the terms of the Trust. The remaining approximately 39% of the net class action payment will be distributed *pro rata* by the Trust to Non-Contributing Claimants—i.e., Woodbridge investors who did not assign their claims against Comerica to the Trust—based on their Net Claims, after deduction from such portion of Notice and Administration Expenses and Service Awards. This plan of allocation is "tailored to the particular facts and circumstances" and is "fair, reasonable and adequate and should be approved." *Jabbari v. Wells Fargo & Co.*, 2018 WL 11024841, at *1, *3 (N.D. Cal. June 14, 2018). Revisiting the claim determinations made at considerable expense under the oversight of the Bankruptcy Court would serve no productive purpose and create the potential for conflicting results, confusion and inefficiency.

6. Absence of Collusion.

The Court must ensure that the settlement "is not the product of collusion among the negotiating parties." *O'Connor v. Uber Techs., Inc.*, 2019 WL 1437101, at *7 (N.D. Cal. Mar. 29, 2019) (citation omitted). There is no hint of collusion here. The amount of the above policy-limits settlement alone dispels any suggestion of collusion, and there was no rush to the negotiating table—the parties did not reach a settlement until full discovery had been completed and the discovery cutoff was approaching. Girard Decl., ¶ 36. The Settlement negotiations were conducted under the auspices of an experienced mediator, and "the use of a mediator experienced in the settlement process tends to establish that the settlement process was not collusive." *Gonzalez*, 2018 WL 3830774, at *7. [*See* Doc. # 192, ¶ 4 (finding at preliminary approval)]. Moreover, Plaintiffs'

counsel will not receive a disproportionate distribution of the Settlement fund. The fee application requests 25% of the class action settlement payment, which is the benchmark for class action attorneys' fees in the Ninth Circuit. *See, e.g.*, *Feyko v. aAD Partners LP*, 2014 WL 12572678, at *8 (C.D. Cal. Mar. 7, 2014) (that class counsel would seek no more than the benchmark weighed in favor of settlement approval); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *8 (N.D. Cal. July 22, 2019) (granting final approval and noting "Counsel's fee request is proportionate to the settlement fund, there is no clear sailing provision, and no funds revert to Defendants."); *In re Biolase*, 2015 WL 12720318, at *6 (granting final approval where "attorneys' fees are to be awarded from the Gross Settlement Fund, and therefore, there is no 'clear sailing' arrangement. Furthermore, the Court is to determine the proportion of the Settlement Fund that will be awarded as attorneys' fees.") (internal citation omitted).

In addition, no portion of the fund will revert to Comerica. *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *7 (N.D. Cal. Mar. 28, 2019) (no collusion when "the Settlement Agreement and fee agreement were reached under the auspices of an experienced mediator" and the fund was not subject to reversion to the defendant); *Hart v. Marriott Int'l, Inc.*, 2019 WL 7940685, at *8 (C.D. Cal. June 24, 2019) (settlement was the product of "serious, informed, non-collusive negotiations" based on the presence of a mediator and absence of a reversion clause).

The proposed service awards, up to $15,000 for each of the individual class representatives and a total of $20,000 for the married class representatives, are also within a customary range. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015); *see Reyes v. Experian Info. Sols., Inc.*, 2020 WL 5172713, at *5 (C.D. Cal. July 30, 2020) ("Other courts within the Central District of California have found a service award of $15,000 per named plaintiff to be reasonable.") (collecting cases).

B. The Class Should be Certified for Purposes of Settlement.

The Court should certify the Settlement Class because the requirements of Rule 23(a) and Rule 23(b)(3) are met, as summarized below.

1. The Requirements of Rule 23(a) Are Satisfied.

a. The Class is Sufficiently Numerous.

First, the numerosity requirement is satisfied because the Class consists of 3,275 Woodbridge investors (including the Trust, as assignee of numerous claims). Girard Decl., ¶ 38; *see Nguyen v. Radient Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) (a class of 40 is presumptively numerous).

b. Commonality is Met.

Second, the commonality requirement is satisfied because Class members' claims "depend upon a common contention such that determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke." *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014) (quotation marks and citation omitted). The overriding common issues in this case are (1) whether (and when) Comerica knew that Shapiro was engaging in fraud or breaches of fiduciary duty and (2) whether it provided substantial assistance to Shapiro in carrying out this unlawful conduct. *See In re First Alliance Mortg. Co.*, 471 F.3d 977, 994 (9th Cir. 2006). The answers to these questions are central to each Class member's claims, and they can be determined on a classwide basis through common proof focusing on Comerica's alleged acts or omissions. *See id.* at 990; *Gonzales v. Lloyds TSB Bank*, 2007 WL 9711433, at *4 (C.D. Cal. May 2, 2007) (finding commonality satisfied as to aiding and abetting claims against bank).

c. Typicality is Met.

Third, typicality is satisfied where, as here, the plaintiffs and Class members "have the same or similar injury" arising from the "same course of conduct." *In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 973 (C.D. Cal. 2015) (citation omitted). Plaintiffs' claims are "reasonably co-extensive with those of absent class members[.]"

Rodriguez v. Hayes, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1020). All claims stem from Comerica's alleged common conduct in relation to Shapiro's scheme and seek redress for the same injury in the form of lost investments. Thus, because the claims of Class members are substantially identical, Plaintiffs' claims are typical of the Class. *See Joint Equity Comm. of Invs. of Real Est. Partners, Inc. v. Coldwell Banker Real Est. Corp.*, 281 F.R.D. 422, 436 (C.D. Cal. 2012) (typicality met because all investors suffered the loss of their investment funds and their claims arose from the same conduct under the same legal theories).

d. Plaintiffs and Their Counsel Adequately Represent the Class.

The adequacy factor "requires (1) a lack of conflicts of interest between the proposed class and the proposed representative plaintiff, and (2) representation by qualified and competent counsel that will prosecute the action vigorously on behalf of the class." *Smith*, 2020 WL 4592788, at *3 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). Plaintiffs have no conflicts with the Class and have participated in the prosecution of this case, including by responding to discovery and appearing for lengthy depositions. Girard Decl., ¶¶ 26, 28, 68-70. *See Shannon v. Sherwood Mgmt. Co.*, 2020 WL 2394932, at *7 (S.D. Cal. May 12, 2020) (plaintiffs were adequate where they assisted "efforts to vigorously prosecute this case.").

Class Counsel are experienced in prosecuting complex class actions and have demonstrated their adequacy in this case. Girard Decl., ¶¶ 51, 60; *see Doe v. Neopets, Inc.*, 2016 WL 7647684, at *4 (C.D. Cal. Feb. 22, 2016). Among other work, Class Counsel successfully overcame the effort to dispose of the class claims in the Woodbridge bankruptcy proceedings, prepared complaints against and discovery requests to Comerica, briefed the motions to dismiss and for class certification, reviewed and analyzed thousands of documents, deposed several key witnesses, and negotiated and documented an all-cash settlement in excess of policy limits. Girard Decl., ¶¶ 8, 10, 13-18, 25-26, 28-32.

The requirement of adequate representation under Rule 23(a)(4) is, therefore, met.

2. The Requirements of Rule 23(b)(3) Are Met.

a. Common Issues Predominate.

"[T]he predominance requirement ensures that common questions present a significant aspect of the case such that there is clear justification—in terms of efficiency and judicial economy—for resolving those questions in a single adjudication." *Shannon*, 2020 WL 2394932, at *7; *see Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). Manageability concerns that might otherwise defeat predominance for a nationwide class are irrelevant in a negotiated settlement. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 563 (9th Cir. 2019) (*en banc*).

The record discloses that the predominant issues in this case are whether Comerica knew of Shapiro's investment fraud and breaches of fiduciary duty and whether Comerica substantially aided his scheme. As in other aiding and abetting cases, these questions lie at the heart of Plaintiffs' claims. *See, e.g.*, *Jenson v. Fiserv Tr. Co.*, 256 F. App'x 924, 926 (9th Cir. 2007); *Coldwell Banker*, 281 F.R.D. at 434 ("Predominance is satisfied on Plaintiffs' claim for aiding and abetting because questions of assistance and knowledge focus on Coldwell, not the alleged victims."); *Gonzales*, 2007 WL 9711433, at *10. In addition, reliance may be presumed when the "misrepresentations or omissions were material," and no reasonable investor would have invested in Woodbridge had they known the returns were being paid from other investors' money. *Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc.*, 326 F.R.D. 592, 613 (N.D. Cal. 2018) (citation omitted). Individual damages calculations or issues "alone cannot defeat class certification." *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 987-88 (9th Cir. 2015). Hence, the predominance requirement is met.

b. A Class Action is Superior.

The superiority inquiry asks "whether maintenance of this litigation as a class action is efficient and whether it is fair." *One Unnamed Deputy Dist. Attorney v. Cty. of Los Angeles*, 2011 WL 13128375, at *4 (C.D. Cal. Jan. 24, 2011); *see Wolin v. Jaguar*

Land Rover North Am., LLC, 617 F.3d 1168, 1175-76 (9th Cir. 2010). In the settlement context, the third and fourth factors of Rule 23(b)(3)—the desirability "of concentrating the litigation of the claims in the particular forum" and manageability concerns—are "moot." *Anderson v. Sherwin-Williams Co.*, 2020 WL 7051099, at *8 (C.D. Cal. May 12, 2020). In this case, requiring thousands of investors to "litigate their claims separately would be inefficient and costly, and permitting class treatment enables the Court to manage the litigation in a manner that is efficient and limits expense for litigants." *de Cabrera v. Swift Beef Co.*, 2020 WL 5356704, at *5 (C.D. Cal. June 25, 2020). A class action also is the superior means of resolving these claims because Class members (including many seniors) would find it difficult to retain counsel and pursue their own lawsuits against Comerica Bank, a well-resourced defendant, in the face of Comerica's vigorous defenses. *See Bentley v. United of Omaha Life Ins. Co.*, 2018 WL 3357458, at *11 (C.D. Cal. May 1, 2018); *Novoa v. GEO Grp., Inc.*, 2019 WL 7195331, at *19 (C.D. Cal. Nov. 26, 2019).

Given the efficiencies from a class proceeding and the significant barriers to individual proceedings, a class action remains superior even where Class members may have valuable individual claims. *See Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431, 444 (C.D. Cal. 2014); *Norris-Wilson v. Delta-T Grp., Inc.*, 270 F.R.D. 596, 612 (S.D. Cal. 2010) (finding it "certainly true that each class member's claim may be large enough to pursue individually, but that doesn't change the Court's view; there are still judicial resources to be conserved and efficiencies to be gained in a single adjudication"); *see also, e.g.*, *Ladore v. Ecolab, Inc.,* 2012 WL 12861141, at *14 (C.D. Cal. Apr. 11, 2012); *In re Wash. Mut. Mortg.-Backed Sec. Litig.*, 276 F.R.D. 658, 668 (W.D. Wash. 2011) ("The Court is also not convinced that superiority is lacking because some of the absent members may have large claims or are sophisticated investors.").

For these reasons, the Court should certify the Settlement Class.

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully ask the Court to grant final approval of the Settlement and dismiss the Action with prejudice.

Respectfully submitted,

Dated: October 8, 2021

By: /s/ *Daniel C. Girard*

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Plaintiffs' Executive Committee

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE WOODBRIDGE INVESTMENTS LITIGATION

Case No. 2:18-CV-00103-DMG (MRWx)

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT OF DISMISSAL

This matter came before the Court for hearing pursuant to the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Providing for Notice, dated September 3, 2021 ("Preliminary Approval Order"), on the motion of Plaintiffs Mark Baker, Jay Beynon Family Trust DTD 10/23/1998, Alan and Marlene Gordon, Joseph C. Hull, Lloyd and Nancy Landman, and Lilly A. Shirley ("Plaintiffs") for approval of proposed class action settlement with Defendant Comerica Bank ("Defendant" or "Comerica"). Due and adequate notice having been given of the Settlement as required by the Preliminary Approval Order, the Court having considered all papers filed and proceedings conducted herein, and good cause appearing therefor, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. This Final Approval Order and Judgment of Dismissal incorporates by reference the definitions in the Settlement Agreement dated August 6, 2021 (the "Settlement"), and all defined terms used herein have the same meanings ascribed to them in the Settlement.

2. This Court has jurisdiction over the subject matter of this consolidated action (the "Action" or "Litigation") and over all Parties thereto, and venue is proper in this Court.

3. The Court reaffirms and makes final its provisional findings, rendered in the Preliminary Approval Order, that, for purposes of the Settlement, all prerequisites for maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied. The Court accordingly certifies the following Settlement Class:

> The Non-Contributing Claimants and the Woodbridge Liquidation Trust, as assignee of the claims of the Contributing Claimants.

4. Pursuant to Federal Rule of Civil Procedure 23(e), the Court grants final approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class.

5. The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt-out of the Settlement Class, to all persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process. The Court further finds that the notification requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met.

6. The Court therefore directs the Trustee and the Parties to implement the Settlement according to its terms and conditions.

7. Upon the later of (i) the Settlement Effective Date and (ii) payment by Defendant (including through its insurers) of the Total Settlement Payment, the Settlement Class Representatives, Comerica, Settlement Class Members, Plaintiffs' Class Counsel, and the Trustee (the "Releasing Parties") shall be deemed to have released and forever discharged, upon good and sufficient consideration, the Defendant Released Parties (including Comerica), the Settlement Class Representatives, Plaintiffs' Class Counsel, the Trustee, the Woodbridge Liquidation Trust, and attorneys for the Woodbridge Liquidation Trust (the "Released Parties") from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, refunds, reimbursements, restitution, and attorneys' fees, of any nature whatsoever, whether arising under federal law, state law, local law, common law or equity, including but not limited to state or federal antitrust laws, any state's consumer protection laws, unfair competition laws, or other similar state laws, unjust enrichment, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any other law, including Unknown Claims, whether suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or

compensatory, (i) that were advanced in the Class Action, (ii) that are related to the facts, transactions, events, occurrences, acts, or omissions alleged in the Class Action and could have been advanced in the Class Action, (iii) that were advanced in the Delaware Adversary, or (iv) that are related to the facts, transactions, events, occurrences, acts, or omissions alleged in the Delaware Adversary and could have been advanced in the Delaware Adversary, as of the date of this Final Approval Order and Judgment of Dismissal (excluding, for avoidance of doubt, any claims to enforce the Settlement Agreement or this Final Approval Order and Judgment of Dismissal). Plaintiffs and each Settlement Class Member, including the Trustee, shall be bound by the Settlement Agreement and shall not sue or bring any action or cause of action, or seek restitution or other forms of monetary relief, including by way of third-party claim, crossclaim, or counterclaim, against any Released Party with respect to any of the Released Claims, including with respect to any Released Claims previously assigned to the Trustee or assigned to the Trustee in the future; they will not initiate or participate in bringing or pursuing any class action or individual lawsuit against any Released Party with respect to any of the Released Claims, including with respect to any Released Claims previously assigned to the Trustee or assigned to the Trustee in the future (if involuntarily included in any such class action or individual lawsuit, they will not participate therein); and they will not assist any third party in initiating or pursuing a class action lawsuit or individual lawsuit against any Released Party with respect to any of the Released Claims, including with respect to any Released Claims previously assigned to the Trustee or assigned to the Trustee in the future. For the sake of clarity, other than as to the Trustee, the "Released Claims" do not extend to any claims or obligations that might exist as between a Settlement Class Member that is or was also a Comerica customer, on the one side, and Comerica, on the other side, but solely in relation to that customer's own banking, lending or credit relationship with Comerica.

8. The persons identified in Exhibit 1 hereto requested exclusion from the Settlement Class as of the Objection and Opt-Out Deadline. These persons shall not share in the benefits of the Settlement, and this Final Approval Order and Judgment of Dismissal does not affect their legal rights to pursue any claims they may have against Defendant. All other members of the Settlement Class are hereinafter barred and permanently enjoined from prosecuting any Released Claims against the Defendant Released Parties in any court, administrative agency, arbitral forum, or other tribunal.

9. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of Defendant or any other Released Party, or (c) any fault or omission of Defendant or any other Released Party in any proceeding in any court, administrative agency, arbitral forum, or other tribunal.

10. Neither Class Counsel's application for attorneys' fees, reimbursement of litigation expenses, and service awards nor any order entered by this Court thereon shall in any way disturb or affect this Judgment, and all such matters shall be treated as separate from this Judgment.

11. Without affecting the finality of this Judgment, this Court reserves exclusive jurisdiction over all matters related to the administration, consummation, enforcement, and interpretation of the Settlement and/or this Final Approval Order and Judgment of Dismissal, including any orders necessary to effectuate the final approval of the Settlement and its implementation. If any Party fails to fulfill its obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment releasing, relinquishing, discharging, barring and enjoining the prosecution of the Released Claims against the Released Parties and to reinstate the Released Claims.

12. If the Settlement does not become effective, this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement and shall

be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement.

13. Upon the Settlement Effective Date, the Litigation shall be dismissed with prejudice.

IT IS SO ORDERED.

DATED: _____

_____

THE HONORABLE DOLLY M. GEE
UNITED STATES DISTRICT JUDGE